27.12.2023
Sl No.19
Court No.8
(rp/gc)

MAT 2535 of 2023
CAN 1 of 2023

Kanai Charan Panda & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Shuvro Prokash Lahiri,
Ms. Tithi Mazumder,
...for the Appellants.
Mr. Tarun Kumar Ghosh,
Ms. Suvasree Ghose,
...for the State.
Mr. Om Narayan Rai,
...for the S.B.I.

1. The appeal arises out of an order passed by a learned Single Judge dated December 21, 2023 in WPA No.28786 of 2023. By the order impugned, the learned Judge dismissed the writ petition, *inter alia*, holding that no further time could be granted to the appellants to pay off the amount borrowed from the bank. The learned Judge observed that despite the bank one-time-settlement offered by the appellants, to which the bank agreed, the appellants failed to pay the agreed amount within the prescribed period. Rather, the appellants adopted a circuitous methodology of challenging the notice of the police authorities, to implement the order passed by the District Magistrate

under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "SARFAESI Act").

2. Mr. Shuvro Prokash Lahiri, learned Advocate for the appellants/ writ petitioners submits that the order impugned suffers from the following irregularities:-

   a) The learned Judge failed to take into consideration that the police authorities were seeking to implement an order, which was time barred. On such score, Mr. Lahiri relies on an unreported decision of the Bombay High Court in the matter of ***L&T Finance Limited Vs. The State of Maharashtra & Ors.*** passed in ***A.S.Writ Petition No.15285 of 2022***.

   b) The SARFAESI proceeding sought to be initiated by the bank, as stated in the notice cancelling the proposed one-time-settlement, was also time barred.

   c) The claim of the bank was barred by limitation as the loan account was declared NPA in 2009. Although,

notice under Section 13(2) of the SARFAESI Act was also issued in 2009, thereafter the bank withdrew from taking any action. Such conduct, amounted to waiver. The fact that the bank wanted to re-initiate SARFAESI proceeding in this case was evident from the impugned notice. The learned Judge failed to take into consideration that the bank, not having proceeded against the borrower within the time prescribed by Section 36 of the SARFAESI Act, could not be permitted to go back on the agreement entered into for a one-time-settlement.

d) That the learned Judge also failed to consider the the appellant No.1, being a cancer patient, was not intentionally in default, but was willing to pay off the amount as settled between the borrower and the bank, provided the writ petitioners/appellants were granted some extra time.

3. On the point of jurisdiction of the writ court, Mr. Lahiri has submitted that

neither the one time settlement, nor the notice cancelling the agreement between the bank and the borrower, nor the notice issued by the police authorities, are matters covered by the SARFAESI Act. Hence, existence of an alternative remedy before the learned Debts Recovery Tribunal, would not be a complete bar in this case.

4. Mr. Lahiri submits that the issue of jurisdiction and the procedural irregularity in the order of the District Magistrate and in all the actions taken by the bank, till date, would indicate that the writ court has the jurisdiction to intervene in judicial review. Not only the decision of the authorities but also the mode in which such decisions were taken, were subject to judicial review.

5. Mr. Om Narayan Rai, learned Advocate for the bank submits that the writ petition is not maintainable at the instance of the writ petitioners/appellants as there is an existence of an alternative remedy. Mr. Rai further submits that it has been well-settled that the order of the District Magistrate should ordinarily be passed within 60 days from the bank approaching

the District Magistrate under Section 14 of the SARFAESI Act, but the said period of 60 days has been held to be directory and not mandatory. In support of his contention, he has relied upon ***C. Bright Vs. District Collector & Ors.*** reported in ***(2021) 2 SCC 392 (Paragraphs 14 to 21)***.

6. Next, it is submitted by Mr. Rai that the order of the District Magistrate was passed within one and half years from the bank approaching the District Magistrate. The one-time-settlement was admittedly agreed upon between the parties, but the appellants failed to comply with the terms and conditions which led the bank to cancel the one-time-settlement proposal. The bank was within its authority to cancel such proposal on the account of failure of the appellants to honour the same. On this ground, Mr. Rai has relied on the decision of the Apex Court in the matter of ***Bijnor Urban Cooperative Bank Limited, Bijnor & Ors. Vs. Meenal Agarwal & Ors.*** reported in ***(2023) 2 SCC 805***. It was held that the borrower, as a matter of right, could not pray for grant of one-time-settlement. After availing of the loan, the borrower could have deliberately not paid

any amount towards instalments, though he was able to make the payment. He could have waited for the one-time-settlement scheme and then prayed for grant of benefit under the said scheme under which, always, a lesser amount than the amount due and payable under the loan account was required to be paid.

7. For convenience, Paragraphs 12 and 13 of the said judgment are quoted below:-

> *"12. Even otherwise, as observed hereinabove, no borrower can, as a matter of right, pray for grant of benefit of One Time Settlement Scheme. In a given case, it may happen that a person would borrow a huge amount, for example Rs. 100 crores. After availing the loan, he may deliberately not pay any amount towards installments, though able to make the payment. He would wait for the OTS Scheme and then pray for grant of benefit under the OTS Scheme under which, always a lesser amount than the amount due and payable under the loan account will have to be paid. This, despite there being all possibility for recovery of the entire loan amount which can be realised by selling the mortgaged/ secured properties. If it is held that the borrower can still, as a matter of right, pray for benefit under the OTS Scheme, in that case, it would be giving a premium to a dishonest borrower, who, despite the fact that he is*

able to make the payment and the fact that the bank is able to recover the entire loan amount even by selling the mortgaged/secured properties, either from the borrower and/or guarantor. This is because under the OTS Scheme a debtor has to pay a lesser amount than the actual amount due and payable under the loan account. Such cannot be the intention of the bank while offering OTS Scheme and that cannot be purpose of the Scheme which may encourage such a dishonesty.

13. *If a prayer is entertained on the part of the defaulting unit/person to compel or direct the financial corporation/bank to enter into a one-time settlement on the terms proposed by it/him, then every defaulting unit/person which/who is capable of paying its/his dues as per the terms of the agreement entered into by it/him would like to get one time settlement in its/his favour. Who would not like to get his liability reduced and pay lesser amount than the amount he/she is liable to pay under the loan account? In the present case, it is noted that the original writ petitioner and her husband are making the payments regularly in two other loan accounts and those accounts are regularised. Meaning thereby, they have the capacity to make the payment even with respect to the present loan account and despite the said fact, not a single amount/installment has been paid in the present loan account for which original*

petitioner is praying for the benefit under the OTS Scheme."

8. Mr. Rai also relies upon paragraphs 23 and 24 of the decision of the Hon'ble Apex Court in the matter of ***State Bank of India Vs. Arvindra Electronics Pvt. Ltd.*** reported in ***(2023) 1 SCC 540*** which read as follows:-

> *"23. It is required to be noted that under the OTS Scheme which was originally sanctioned in the year 2017 the borrower was required to pay Rs.10,53,75,069.74 against the outstanding of Rs.13,99,89,273.99. Therefore, under the original sanctioned OTS Scheme the borrower was getting the substantial relief of approximately 3 crores. The Bank agreed and accepted the OTS offer on the terms and conditions mentioned in the letter dated 21.11.2017. In the sanctioned letter dated 21.11.2017 it was specifically mentioned in Clause (iv) that the entire payment under the OTS Scheme was to be made by 21.05.2018, otherwise OTS would be rendered infructuous. Therefore, borrowers were bound to make the payment as per the sanctioned OTS Scheme. Therefore, the High Court ought not to have granted further extension de hors the sanctioned OTS Scheme while exercising the powers under Article 226 of the Constitution of India.*

24. The submissions on behalf of the borrower that in case of some other borrowers the time was extended is concerned, the same is neither here nor there. The Bank mutually can agree to extend the time which is permissible under Section 62 of the Indian Contract Act. The borrower as a matter of right cannot claim that though it has not made the payment as per the sanctioned OTS Scheme still it be granted further extension as a matter of right. There cannot be any negative discrimination claimed. The borrower has to establish any right in their favour to claim the extension as a matter of right."

9. It has been urged before this Court by relying on a decision of ***Kanaiyalal Lalchand Sachdev & Ors. Vs. State of Maharashtra & Ors.*** reported in ***(2011) 2 SCC 782*** that an action under Section 14 of the SARFAESI Act, constitutes an action taken after the stage of Section 13(4) of the said Act, and therefore, the action and order passed under Section 14 of the said Act, were amenable to the jurisdiction of the learned Debts Recovery Tribunal under Section 17(1) of the said Act.

10. Finally, the decision of the Hon'ble Apex Court in the matter of ***Edukanti Kistamma (Dead) Through LRS. & Ors. Vs. Venkatareddy (Dead) Through LRS.***

& Ors. reported in ***(2010) 1 SCC 756,*** has been relied upon by Mr. Rai in support of his contention that the notice issued by the police authorities was a consequential action to the order passed by the learned District Magistrate, under Section 14 of the said Act. The main order of the District Magistrate, not having been challenged in any forum whatsoever, the consequential notice of the police authorities for implementation of the order of the District Magistrate was not available for challenge.

11. Having considered the rival contentions of the parties, we are conscious of the fact that this appeal is an intra-court appeal.

12. The learned Judge dealt with the contentions of the writ petitioners/appellants, with regard to the reference to the decision of the Bombay High Court. His Lordship distinguished the same. We are in agreement with His Lordship on that score. It is evident from paragraph 15 of the judgment in **L&T Finance Ltd.** (supra) that the Bombay High Court was dealing with a situation where the police authorities were failing to provide the infrastructural support and other necessary backup, for

implementation of the orders of the District Magistrates/ Collectors under Section 14 of the said Act.

13. The learned Single Judge held that the police authorities should assist in implementation of the order speedily and preferably within two weeks from the passing of the same. The issue decided by the Bombay High Court has been paraphrased in paragraph 15 of the said decision and the directions which were issued were, inter alia, as follows:-

a) That the District Magistrates/ Collectors in the State of Maharashtra should dispose of the applications filed under Section 14 of the SARFAESI Act, within 30 days.

b) The orders should be implemented not later than four weeks.

c) Officers entrusted with the implementation had the option to appoint Advocates to implement the order.

d) The Magistrates and the Collectors should submit a report, giving the details of the applications to the Divisinal Commissioner if the applicants were not disposed of.

e) If the order is not implemented within 60 days from passing of it, the applicant was at liberty to approach the Divisional Commissioner for implementation thereof, within the next 15 days. Other directions were also issued.

14. We notice that such directions were issued upon considering the fact that the orders passed under Section 14 of the SARFAESI Act, were not being implemented in the State of Maharashtra. Such directions were issued to the Divisional Commissioner, District Magistrate, Collector, police authorities, etc. within the State of Maharashtra.

15. The judgment is not an authority on the point of limitation. It is also not an authority on the issue that the order of the District Magistrate becomes a nullity, if 60 days expires from the filing of the application. Secondly, the question of alternative remedy was not decided in the said decision.

16. Although Mr. Lahiri contends that His Lordship has not taken into consideration the period of limitation, this Court finds that the 13(2) notice was issued in 2009

after the account was declared as NPA. The first claim with regard to the money, was raised by the bank in the 13(2) notice itself, soon after the account was declared as NPA. Once the learned Trial Judge has taken into consideration all the factual aspects and the law which is in place and decided that no further extension of time could be given to the borrower in the writ petition, this Bench is not inclined to interfere with such findings for the reasons as below:-

a) The decisions of the Hon'ble Apex Court in **Bijnor Urban** (supra) and **Arvindra Electronics** (supra) clearly laid down that one-time-settlement cannot be a matter of right. In this case, the appellants want further extension in support of the one-time-settlement, which the bank has already cancelled.

b) The writ petition cannot be entertained as there is an alternative remedy available to the petitioners/ appellants. Even the issue of limitation, the issue of waiver and also the allegation of nullity of the order of the District Magistrate are

available to the appellants to be availed of before the appropriate forum.

c) Finally, the notice issued by the police authorities, is a consequential action to the orders passed by the District Magistrate. That itself, cannot be a ground for passing orders in the writ petition. His Lordship has recorded that a chance was given to the petitioners to avail of the one-time-settlement which the petitioners failed to do and the Court sitting in Article 226 of the Constitution of India, could not extend the time for the petitioners allowing them to honour the settlement once again.

17. Before parting, we would like to refer to the two decisions of the Hon'ble Apex Court in the matter of ***South Indian Bank Ltd. & Ors. Vs. Naveen Mathew Phillip & Anr.*** reported in ***2023 SCC OnLine SC 435*** and ***Varimadugu Obi Reddy Vs. B. Sreenivasulu & Ors.*** reported in ***(2023) 2 SCC 168.*** The Apex Court, deprecated the practice of the writ courts in entertaining writ petitions by borrowers.

18. Under such circumstances, we do not find any reason to interfere with the order impugned.

19. Accordingly, the appeal and the connected application stand dismissed.

20. However, there shall be no order as to costs.

21. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Apurba Sinha Ray, J.) **(Shampa Sarkar, J.)**